

STATE BAR OF CALIFORNIA
COMMISSION FOR THE REVISION OF THE RULES
OF PROFESSIONAL CONDUCT

MEETING SUMMARY – OPEN SESSION

Tuesday, October 30, 2001
(9:30 am)

MEMBERS PRESENT: Mr. Sondheim (Chair); Ms. Foy; Mrs. Julien; Mr. Lamport; Mr. Martinez; Mr. Melchior; Ms. Peck; Mr. Sapiro, Jr.; Mr. Tuft; Mr. Vapnek; and Mr. Voogd.

ALSO PRESENT: Ira Spiro (Liaison from the State Bar ADR Committee); and Randall Difuntorum, Mark Taxy, Mary Yen (State Bar staff).

I. APPROVAL OF ORIENTATION SESSION ACTION SUMMARY FROM SEPTEMBER 28, 2001 MEETING

The Action Summary from the September 28, 2001 meeting was approved. In addition, it was suggested that future summaries addressing rule amendment discussions be organized so that discussion and action on individual rules are placed on separate pages. This format would be used to facilitate a filing system based rule numbers.

II. MATTERS FOR ACTION

A. Policy Issues Monitoring

1. ABA Ethics 2000

Regarding the ABA Ethics 2000 Commission on the Evaluation of the Rules of Professional Conduct, it was determined that Commissioners should attend and observe the ABA House of Delegates proceedings to be held at the ABA Mid-Year meeting (January 30 - February 5, 2002, in Philadelphia). The following Commissioners volunteered to attend: Mr. Lamport; Ms. Peck; Mr. Tuft; and the Chair.

2. State Bar Task Force on Multidisciplinary Practice

Regarding the Task Force on Multidisciplinary Practice, Mrs. Julien and Mr. Tuft were selected to serve as Commission monitors

3. Supreme Court Advisory Task Force on Multijurisdictional Practice

Regarding the Task Force on Multijurisdictional Practice, Mr. Sapiro and Mr. Lamport were selected to serve as Commission monitors.

4. Family and Juvenile Law Advisory Committee of the Judicial Counsel

Regarding the Family and Juvenile Law Advisory Committee, Mr. Martinez was selected to serve as Commission monitor.

5. The Pro Bono Subcommittee of the State Bar Standing Committee on the Delivery of Legal Services

Regarding the Pro Bono Subcommittee, Ms. Peck was selected to serve as Commission monitor.

6. The Discreet Task Representation Committee of the State Bar Access to Justice Commission

Regarding the Discreet Task Representation Committee, Ms. Peck indicated her role as a COPRAC liaison to the Committee and she was selected to serve as the Commission's monitor along with Mr. Tuft. Ms. Peck also reported that it is likely that Toby Rothchild will be designated by the Discreet Task Representation Committee as that groups' liaison to the Commission.

7. The Judicial Council's Task Force on the Quality of Justice, Subcommittee on Alternative Dispute Resolution and the Judiciary System - The Working Group on the Civil and Small Claims Advisory Committee Alternative Dispute Resolution Subcommittee

Regarding these Judicial Council groups, Mr. Voogd and Mr. Lamport were selected to serve as the Commission's monitors.

8. COPRAC AB 363 Subcommittee

Regarding COPRAC's AB 363 Subcommittee, Ms. Peck, Mr. Melchior, Mr. Sondheim and Mr. Lamport were selected to serve as the Commission's monitors.

9. Joint Task Force of the Judicial Council and the State Bar on AB 2069

Regarding the AB 2069 Task Force, Mr. Vapnek was selected to serve as the Commission's monitor.

All of the selected monitors were requested to report items of significance in writing so the members will have the opportunity to read the reports in advance of Commission meetings.

B. Discussion of Methodology and Other Strategic Planning Matters.

Discussion favored the topical and seriatim approaches to the analysis of the Rules of Professional Conduct. Another suggestion was to develop the concepts behind the Rules by starting with an overview of the California Rules of Professional Conduct, the State Bar Act, the ABA Model Rules, and Restatement 3rd.

Following discussion, the Commission decided to defer making a decision on the possible methodologies for studying the Rules.

C. Selection of a Commission "Reporter"

Staff provided an oral report. Action to select a candidate was taken in closed session. (See closed session summary.)

D. Proposals for Public Comment Solicitation

The Commission engaged in a general discussion concerning the draft Notice of Publication for Member & Public Comment. (Attached to this summary is a comparison document showing suggested modifications.) Staff was assigned to finalize the document.

A discussion of ways to increase response to matters open for public comment included the following:

1. Ask SF Chronicle legal writer, Reynolds Holding, write a story the reactivation of the Rules Revision Commission. Mr. Difuntorum will check with State Bar media relations and the Cal Bar Journal to explore this idea.
2. Expand mailing list to include trial court and/or presiding judges, State Bar sections
3. Provide local bar associations with information and encourage them to inform their members.
4. Provide CLE providers with information and encourage them to inform program participants.
5. Expand information available on the State Bar website.
6. Include a program as part of the June 29, 2001 Ethics Symposium. The session would explain what the Rules Revision Commission is doing and solicit input from the program participants.
7. Conduct a forum or open session at the State Bar Annual Meeting. Mr. Difuntorum will speak with Pam Wilson to secure a space and a 2-3 hour time slot. One option is to conduct one public hearing and one open working session.

E. Proposal for a Vice-Chair

Any Commission member interested in this position or wishing to make a nomination should inform Mr. Difuntorum by December 20, 2001. Voting will be conducted by mail ballot.

[Important Note on Action Taken after the Oct. 30th Meeting: After consultation with staff, the Chair decided that anyone interested in becoming the Vice-Chair should notify the staff by January 25, 2001 (not December 20th). This will give members an additional opportunity to become familiar with each other before a mail ballot is conducted prior to the March meeting. Furthermore, so as to avoid the nomination of an "unwilling" candidate, members can only nominate themselves, not someone else.]

F. Rescheduling of Future Meetings

1. The meeting originally scheduled for Monday, March 18, 2002 was tentatively rescheduled for Sunday, March 17, 2001 (as part of the State Bar Mid-Year Meeting in Sonoma, CA).
2. The meeting originally scheduled for Friday, September 22, 2002 was tentatively rescheduled for Friday, September 13, 2002.
3. An addition meeting was tentatively scheduled for Friday, October 11, 2002 (as part of the State Bar Annual Meeting in Monterey, CA).